

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2010 SEP -9 PM 2:08 JP

STATE OF WEST VIRGINIA, ex rel.
DARRELL V. McGRAW, JR.,
Attorney General,

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

Civil Action No. 00-C-151
James O. Holliday, Judge

PUBLISHERS CLEARING HOUSE LLC,

Defendant.

SUPPLEMENTAL CONSENT JUDGMENT

This matter is before the Court on the parties' stipulation for entry of a Supplemental Consent Judgment. The Court has reviewed the Supplemental Consent Judgment and concludes good cause has been shown to enter this Supplemental Consent Judgment (hereafter Supplemental Judgment).

I. RECITALS

In approximately January 1999 or thereafter a number of States, including the State of West Virginia (the "State"), filed claims against Defendant Publishers Clearing House (now a New York limited liability company, "PCH") under their consumer protection laws. Approximately one-half of the States settled and resolved their claims with PCH by entering into a Consent Judgment (a similar version was filed in each state on the same day) in August 2000 (the "2000 Consent Judgment").

The remaining States resolved their claims with PCH by entering into a separate Consent Judgment (a similar version was filed in each state) in July/August 2001 (the "2001 Consent Judgment"). A Consent Judgment was entered in this action on August 15, 2001 (the "Consent Judgment").

Since the entry of the Consent Judgments various States from both groups have monitored PCH's compliance with these Consent Judgments. As a result of this compliance monitoring the states listed in Schedule A hereto (the "Participating States")¹ have discussed with PCH various instances when the Participating States contend PCH has violated the Consent Judgments. As a result of those discussions PCH has in some instances voluntarily discontinued certain mailings.

PCH denies it has violated the Consent Judgments and denies any liability or wrongdoing.

In the interest of resolving and forever discharging any claims up to the date of filing this Supplemental Judgment that West Virginia has for any alleged violation of the Consent Judgment the parties enter into this Supplemental Judgment.

Accordingly, IT IS ADJUDGED:

II. SCOPE OF SUPPLEMENTAL JUDGMENT

The terms of the Consent Judgment remain in full force and effect, unless otherwise specified in this Supplemental Judgment. All terms and definitions used herein shall have the same meaning as were used in the Consent Judgment. As used in this Supplemental Judgment, the term "Consent Judgments" shall mean the 2001 Consent Judgment and the 2000 Consent Judgment, together, and the term "Consent Judgment" shall refer to the 2001 Consent Judgment entered in the State.

III. ADDITIONAL CONSUMER PROTECTIONS

The following terms shall take effect on a date (the "Effective Date") that is one hundred twenty (120) days after the date of entry of this Supplemental Judgment. In the

¹ The Participating States are led by an Executive Committee (hereafter "EC") of States: Alaska, Colorado, Nevada, North Carolina, Oregon, Pennsylvania, Vermont and Wisconsin.

event of any conflict or inconsistency between the 2001 Consent Judgment and this Supplemental Judgment, this Supplemental Judgment shall control.

1. ENTRY/ORDER

Section 33 of the Consent Judgment is amended by adding subparagraphs, each to be lettered sequentially to follow the existing subparagraphs in the Consent Judgment, as follows:

- e. PCH shall separate Order-related and Sweepstakes-related portions of the form with a double line, and display the disclosures required by clause (I) (a statement that discloses that no purchase is necessary to enter such sweepstakes) and (II) (a statement that discloses that a purchase will not improve an individual's chances of winning) of 39 U.S.C.A. 3001(k)(3)(A)(ii).
 - (i) For customers with 3 or more paid orders in any 2-month period within the preceding 2 years, between the two dividing lines, with a Clear and Conspicuous reference to the location of the Sweepstakes Facts appearing in the Order-related portion of the form either immediately above or immediately below the line separating such messages from the Order-related portion of the form, as applicable, with no intervening copy or graphics; and
 - (ii) For all others, in the same manner or in a box adjacent to the order boxes (or similar order device), with a Clear and Conspicuous reference to the location of the Sweepstakes Facts appearing immediately adjacent to such messages with no intervening copy or graphics.

The double lines shall extend across the entire page, the lines shall be

solid, and the federal disclosures shall be Clear and Conspicuous. The Sweepstakes-related portion shall not include any Order-related information or requests to order merchandise. Instructional copy relating to the location of Sweepstakes stamps or other Sweepstakes interactions on the Sweepstakes Entry Form shall be limited to that which is necessary to complete the Sweepstakes entry, and such instructions along with everything else in the Sweepstakes-related portion shall not refer to in any way or by reference or arrows point to the Order-related portion.

- f. Similarly the Order-related portion of a combined Entry/Order form shall be completely separated from and not refer to in any way the Sweepstakes-related portion or to entering the Sweepstakes or winning a Prize.
- g. Non-Order entrants shall not be required to interact with the Order-related portion in any way to enter, including affixing any stamp or checking any box in the Order-related portion.
- h. The Order-related portion shall not include pre-checked boxes that relate to merchandise offers or ordering, and any request in the Order-related portion for product interest information shall be only in the Order-related portion of the combined Entry/Order form. There shall be no request for product interest information in the Sweepstakes-related portion.
- i. Instructional copy (confined within the Sweepstakes-related portion) may tell the Recipient to return the form by the deadline date, but shall not state that the recipient must or should return the entire form to enter.

2. ORDER HISTORY/ENTRY HISTORY

Section 20 of the Consent Judgment is amended by adding a subparagraph, to be lettered sequentially to follow the existing subparagraphs in the Consent Judgment, as an act or practice deemed to violate said section, as follows:

- j. Using Sweepstakes Communications which contain information relating to a Recipient's Order history and a Recipient's Entry history on the same side of one document or which convey information relating to a Recipient's Order history and Entry history by using titles or text that contain the same or substantially the same wording. Neither Entry nor Order "history" nor "information relating to" Entry or Order history shall be deemed to refer to generalized statements referring to or acknowledging a Recipient's status as a previous customer or previous entrant into PCH sweepstakes.

3. IDENTIFYING CHARACTERISTICS/KEY CODES/PRIZE CONFUSION

Section 15.c. of the Consent Judgment is amended by adding subparagraphs, each to be numbered sequentially to follow the existing subparagraphs in the Consent Judgment, as an act or practice deemed to violate said sections, as follows:

- xviii. Using a Recipient's initials, personally identifying number or other personally identifying information to Misrepresent that the Recipient has been specially selected or is in a better position to win a Prize than other timely entrants with the same characteristics. Notwithstanding the previous sentence, PCH may tell a customer what unique number he or she has been assigned in a sweepstakes to identify the customer. Prohibited terms include "key code."

- xix. Representing in a Sweepstakes Communication that a person residing in a particular geographic area or having a particular

characteristic has an enhanced status or is more likely to win than other timely entrants residing in the same area or any other geographic area or sharing the same personal characteristics unless such is the case.

xx. Combining references in any Sweepstakes Communication to different Prizes or Sweepstakes in such a way as to Misrepresent the likelihood of winning any such Prize or Sweepstakes.

xxi. Making any reference in a Sweepstakes Communication to a particular Sweepstakes or Prize in such a manner as to Misrepresent the likelihood of winning any other Sweepstakes or Prize.

xxii. Making a Representation in a Sweepstakes Communication that combines references to more than one Sweepstakes or Prize without also identifying the giveaway number or other uniquely identifying term for each.

4. USE OF WORD GUARANTEE

Section 15.c.iv. of the Consent Judgment is amended to delete existing subparagraph (b) and add and substitute a new subparagraph (b), to follow sequentially Section 15.c.iv.(a) in the Consent Judgment, as an act or practice deemed to violate said section, as follows:

- b. any term that Misrepresents that the Recipient has an enhanced status or position within a Sweepstakes superior to other timely entrants to describe any such status or position, including, but not limited to, use of the word "guarantee" or any variant regarding the Recipient in relationship to a Sweepstakes or Prize.

5. COMMITTEES/BOARDS

Section 17 of the Consent Judgment is amended by adding the following:
“Without in any way limiting the foregoing, the following acts or practices are deemed to violate this section:

- a. Use of the terms “Winner Selection Committee” or “Winner Search Party” or any other term that includes the word “winner” to refer to any committee or board that plays a role in the conduct of a Sweepstakes.
- b. Representing that there is a board, office, committee or other entity that determines the winner of a Sweepstakes unless such is the case.
- c. Making any reference to the “Board of Judges” other than in the Official Rules.
- d. For a period of three (3) years following the Effective Date, using a letter, notice, memorandum or envelope that is or purports to be from the “Office of Contests” or the “Department of Contests” (or any similar term for an office or department that includes the word “Contest”), or is signed by an individual identified therein as a member thereof, that contains the Recipient’s name, address or other personally-identifiable information.
- e. Using any other letter, notice or memorandum that is or purports to be from such an office or department referenced in subparagraph d above that:
 - i. Does not include a Clear and Conspicuous statement as to the role and responsibilities of the office or department;
 - ii. Represents that the office or department selects the winner of any Sweepstakes; and
 - iii. Does not include a statement to the effect that PCH doesn’t know who the winner is yet.”

6. CUSTOMER-ONLY SWEEPSTAKES

Section 20.h. of the Consent Judgment is amended by adding the following additional requirements, each to be numbered sequentially to follow the existing subparagraphs in the Consent Judgment:

- v. Notwithstanding anything contained in clause (iii) above, Customer-Only Sweepstakes will be mailed no more than:
 - A. Twice a year, for a period of no more than two (2) weeks in each instance, plus
 - B. Three times a year, for single mailings;provided that the mail volume for any such two-week period or single mailings is consistent with PCH's normal mailing practices and patterns and does not represent a significant increase over normal volumes in comparable periods.
- vi. Any Sweepstakes Communication that includes a Customer-Only Sweepstakes shall state clearly that no purchase is necessary from that mailing in order to enter the Customer-Only Sweepstakes included in that bulletin.

7. DUPLICATE MAGAZINE SUBSCRIPTIONS

PCH shall, as soon as practicable but in any event no later than eighteen months after the date of entry of this Supplemental Judgment, implement procedures designed to identify instances in which a person described in paragraph 1.a.i. of Article VI below places duplicate magazine subscription orders through PCH during any rolling twelve calendar month period, checked not less frequently than quarterly. Promptly upon identification of any such instance, PCH shall cancel such duplicate subscription orders to the extent that they result in such a person having a subscription to a title for a period in excess of three years.

IV. **SPECIAL COMPLIANCE COUNSEL; OMBUDSPERSON**

A. **Special Compliance Counsel.** Notwithstanding the time limitation set forth in the 2001 Consent Judgment, PCH shall extend the engagement term of the Special Compliance Counsel, with all the powers, duties and responsibilities set forth in section 52.a. of the 2001 Consent Judgment, for an additional period of three years from and after the date of entry of this Supplemental Judgment

B. **Ombudsperson.** PCH shall engage an attorney of national stature with a consumer protection background (who may be Jeffrey A. Modisett, Esq., and the Bryan Cave law firm of which he is a member) for a period of three years from the date of entry of this Supplemental Judgment to work with Special Compliance Counsel and to be the "Ombudsperson" with respect to PCH's compliance with the injunctive provisions of the Consent Judgment and this Supplemental Judgment.

1. **General Duties and Responsibilities.** The Ombudsperson shall have the following general duties and responsibilities:
 - a. Within thirty (30) days after the date of entry of this Supplemental Judgment, to meet with Special Compliance Counsel to review its promotion review procedures and to examine Special Compliance Counsel's approach to compliance with the Consent Judgments.
 - b. Within sixty (60) days after the date of entry of this Supplemental Judgment, to undertake and complete an examination of the actual conduct and operation of the promotion review process, and to report to PCH and Special Compliance Counsel (i) any instance or respect in which one or both of them are not, in the view of the Ombudsperson, following the established promotion review procedures and (ii) any recommendations he or she may have for improvements of and enhancements to the process.

- c. At all times, to be available to the Attorney General, if he or she has issues with or objections to any promotional mailing package or practice, to transmit such issues or objections to PCH and Special Compliance Counsel and to explain to PCH and Special Compliance Counsel the Attorney General's point of view.
 - d. PCH shall provide the Ombudsperson with current copies of its promotional mailings and such additional information or materials as the Ombudsperson may reasonably request to fulfill his or her responsibilities hereunder.
2. Quarterly Review of High Volume Mailings. The Ombudsperson shall review (A) the ten most widely distributed PCH promotional packages determined by volume and (B) two less widely distributed (including test mailings) PCH promotional packages, in each case as mailed to persons appearing on its records with an address in the Participating States, during a calendar quarter for compliance with the Consent Judgment and this Supplemental Judgment, in accordance with the following procedures:
- a. As soon as practicable, but no later than fifteen (15) days after the end of each calendar quarter, PCH shall provide the Ombudsperson with a printed sample of each of the promotional mailing packages to be reviewed for that quarter.
 - b. As soon as practicable, but no later than thirty (30) days after receipt of such printed samples, the Ombudsperson shall review or cause to be reviewed such packages to determine whether or not they are in compliance with the Consent Judgment and this Supplemental Judgment.

- c. The Ombudsperson shall report to Special Compliance Counsel and PCH any instance(s) in which such packages are not, in his or her view, in compliance with the Consent Judgment and this Supplemental Judgment.
- d. Special Compliance Counsel shall have thirty (30) days after receipt of any such report to make such written or oral submission(s) to the Ombudsperson as it may think fit and proper (if any) to rebut any assertion by the Ombudsperson of non-compliance by PCH.
- e. If, after notice and due consideration of any such submission by Special Compliance Counsel, the Ombudsperson is not satisfied that the promotional mailing package in question is in compliance with the Consent Judgment and this Supplemental Judgment, the Ombudsperson shall promptly notify Special Compliance Counsel and PCH.
- f. In the event that PCH wishes to mail a promotional mailing package as to which the Ombudsperson has made such a finding, PCH shall promptly provide the Ombudsperson with a schedule showing the mailing date and last change date (i.e., the last step in promotional mailing package development before the file is locked down for pre-press production) of the next and all subsequent mailings (if any) for which that package is scheduled.
- g. If PCH fails either to withdraw the package from consideration for future mailings, or to make such modifications thereto as shall be satisfactory to the Ombudsperson and Special Compliance Counsel, provided the finding is first communicated to PCH prior

to the last change date for the mailing in question, the Ombudsperson shall promptly notify the Attorney General of that fact and provide the Attorney General with a printed sample of the promotional mailing package in question and a statement of the basis for the Ombudsperson's determination of non-compliance.

3. Semi-Annual Reports. The Ombudsperson shall provide the Attorney General with a semi-annual report within thirty (30) days after the end of the first six-month period following the Effective Date and after each of the following three (3) such 6-month periods, in each case covering the immediately preceding 6-month period, which reports will describe generally his activities in the capacity of Ombudsperson during that period, including a statement of the number of mailings reviewed, the number of instances in which PCH objected to a finding by the Ombudsperson and the number of instances (if any) in which PCH rejected any findings of the Ombudsperson under paragraph B(2)(g) of this Article IV.
4. Review Frequency. No promotional mailing package need be reviewed for compliance by the Ombudsperson more frequently than once in a calendar year. Any promotional mailing package that would otherwise be required to be submitted to the Ombudsperson for review in respect of any calendar quarter under the preceding paragraph need not be so submitted if that package, or a package substantially the same as that package in all material respects, had been reviewed by the Ombudsperson without a finding of non-compliance with the Consent Judgment or this Supplemental Judgment, after going through the procedures set forth above, in respect of any of the three (3) preceding calendar quarters.

5. Confidential Treatment of Reports. All reports to the Attorney General by the Ombudsperson hereunder shall be deemed to be confidential information subject to such protections as may be accorded to such information under the laws, including FOIA laws, of the State. The State acknowledges that the undertaking to provide notices and reports to the Attorney General set forth herein is given for the purposes of settlement and that the reports of neither Special Compliance Counsel nor the Ombudsperson shall constitute any admission of wrongdoing by PCH nor may they be introduced into evidence in any proceeding by the Attorney General or the State in the event of any litigation between the State and PCH or any other person whatsoever. Nothing that Special Compliance Counsel or the Ombudsperson expresses or concludes may be used by any person as evidence for or against PCH in any dispute or litigation involving the mailings.
6. Fees and Expenses. PCH shall be responsible for and shall promptly pay the reasonable fees and disbursements of the Ombudsperson incurred in connection with the performance of his or her duties and responsibilities hereunder.

V. REVIEW OF SWEEPSTAKES COMMUNICATIONS

1. PCH shall provide the Office of the Attorney General upon letter of request to PCH or its counsel with a sample copy of any Sweepstakes Communication that is delivered by mail, e-mail and/or the Internet to persons appearing on its records as having an address in the State. The Attorney General may make such a request at any time. Receipt and/or review of sample Sweepstakes Communications by the Attorney General

shall not constitute approval of or agreement to PCH's use of the Sweepstakes Communication(s); and

2. PCH shall take into account not only its own quality control and the recommendations of its legal counsel but also the input from Special Compliance Counsel and the Ombudsperson and in the event of any report from the Ombudsperson as to possible non-compliance shall carefully review its Sweepstakes Communications, including the one at issue, to ensure compliance with the judgments as contemplated herein.

VI. PCH'S HIGH ACTIVITY CUSTOMER (HAC) PROGRAM

PCH shall in addition to complying with the current provisions of section 46 through 52 of the 2001 Consent Judgment institute the following enhancements to the "High Activity Customer" programs prescribed by these paragraphs:

1. Quarterly Identification of Customers Subject to Survey. PCH shall, within thirty (30) days after the end of each calendar quarter, identify each person appearing on its customer file with an address within the State that meets any of the following criteria:
 - a. The customer
 - i. has paid Orders of \$500 or more in the preceding quarter from Sweepstakes Communications, and
 - ii. is determined to be 65 years of age or older (or his or her age is unknown), and
 - iii. is found to have a higher than average probability of being unpromotable through the application of the regression risk model shown to the EC December 10, 2007, a copy of which has been

provided to each Participating State requesting the same, or a more accurate version (hereinafter the "Regression Risk Model"); or

- b. The customer has paid Orders of \$900 or more in the triggering quarter from Sweepstakes Communications; or
- c. The customer is a "Spiking Customer." The term "Spiking Customer" means a person who meets all of the following criteria:
 - i. The person has been a PCH customer for at least five (5) consecutive calendar quarters;
 - ii. The person has paid Orders of five hundred dollars (\$500) or more in the triggering quarter from Sweepstakes Communications; and
 - iii. The aggregate amount of such paid Orders during the triggering quarter is more than 2.5 standard deviations above the average amount of their paid Orders during the four (4) consecutive calendar quarters immediately preceding the triggering quarter.

PCH shall not select any such identified customer for the receipt of Sweepstakes Communications unless and until the Special Compliance Counsel determines that such Sweepstakes Communications are appropriate for the customer via the PCH survey under Section 46.a. of the 2001 Consent Judgment. The Quarterly Identification process described in this paragraph is not subject to a 3-year limitation and will continue indefinitely. As used in this paragraph, the expression "higher than average probability" means any model score greater than one (1) standard deviation above the mean for the score distribution of the original model development population for the Regression Risk Model.

2. Annual Identification of 500 Customers Most Likely to be Unpromotable. PCH shall, within sixty (60) days after the end of each calendar year, identify each person that meets all of the following criteria:

- a. The person appears on PCH's customer file with an address within the Participating States; and
- b. The person has paid Orders of \$1000 or more in the preceding calendar year from Sweepstakes Communications; and
- c. The person is among the 500 customers from among all those resident in the Participating States, taken as a whole, meeting the criteria in subparts (a) and (b) of this paragraph 2 who are found to have the highest probability of being unpromotable through the application of the Regression Risk Model.

PCH shall not select any such identified customer for the receipt of Sweepstakes Communications unless and until the Special Compliance Counsel determines that such Sweepstakes Communications are appropriate for the customer via the PCH survey under Section 46.a. of the 2001 Consent Judgment.

3. Annual Automatic Permanent Suppression. For a period of three years following the entry of this Supplement Consent Judgment, PCH shall annually apply the Regression Risk Model to each person appearing on its records with an address in this State who has paid Orders in the preceding year at or above \$3800.00 and, in lieu of surveying the person as mandated by Section 46 of the 2001 Consent Judgment, automatically permanently suppress all those who are found to have a high probability of being unpromotable.

- a. This is a failsafe mechanism, and it is anticipated that no one will fail to be identified by the Quarterly Identification process before reaching the \$3800.00 annual level.
- b. However, if twenty (20) or more persons from the Participating States, who should have been identified and suppressed by the Quarterly Identification process before reaching that level, reach the \$3800.00 level

in the third year, PCH shall continue for an additional 3 years to apply the Regression Risk Model to persons at this dollar level in accordance with this section and shall automatically suppress the persons in lieu of surveying them under the annual survey program.

As used in this paragraph, the term "high probability" means any model score greater than one and eight tenths (1.8) standard deviations above the mean for the score distribution of the original model development population for the Regression Risk Model.

4. Regression Risk Model Improvements. PCH shall review the Regression Risk Model from time to time and make such improvements or adjustments therein as may be necessary to reflect recent transaction activity and so render the Regression Risk Model more accurate. The States may retain, at their expense, an expert of recognized standing in the field to consult with PCH on the construction and application of the Regression Risk Model. PCH shall work in good faith with the States' expert and take into consideration any reasonable recommendations from the States' expert.
5. Annual Minimum Number of Surveys to Be Completed by PCH.
 - a. Annually, for each of the first three (3) Survey Years following the entry of this Supplemental Consent Judgment, PCH shall survey at least a Minimum Number of its customers in the Participating States. The Minimum Number shall be equal to the product of 16,000 multiplied by a percentage, the numerator of which is the population of the Participating States and the denominator of which is the population of the United States, according to the latest pronouncement by the United States Census Bureau, excluding from both the numerator and the denominator persons shown on PCH's records with an address in the State of Iowa. If the total

number of persons identified for survey under section 46 of the 2001 Consent Judgment and Article IV of the 2000 Consent Judgment and paragraphs 1 (Quarterly Identification of Customers Subject to Survey), 2 (Annual Identification of 500 Customers Most Likely to be Unpromotable) and 11b (Annual Letter Screening and Suppression), of this Article VI is less than the Minimum Number, PCH shall then survey additional customers as set forth in this paragraph to reach the Minimum Number.

- b. In order to reach the Minimum Number, if needed, PCH shall use the Quarterly Identification process to identify customers who had paid orders in the preceding quarter of less than \$500 in decreasing amounts and also meet the criteria in paragraph 1a of this Article VI, or from the pool of persons with \$1000 or more in paid Orders in the preceding year by increasing the number identified for survey under paragraph 2 of this Article VI, as necessary to make up the shortfall. PCH shall assess the amount of any shortfall in reaching the Minimum Number each quarter on the basis of good faith projections for the year.
- c. The term "Survey Year" means each successive period of four consecutive calendar quarters, the first such Survey Year commencing with the first full calendar quarter following the entry of this Supplemental Judgment and the second and third Survey Years commencing with the fifth and ninth calendar quarters, respectively, following that quarter.

6. CPI Escalator.

- a. The reference to "in this paragraph 52" in paragraph 46i of the 2001 Consent Judgment is amended to "in this paragraph 46".
- b. On January 1 of each calendar year after the date of entry of this

Supplemental Consent Judgment, the paid Order Dollar Thresholds, within the meaning of Paragraph 46.i. of the Consent Judgment, or measuring amounts, for the HAC program set forth above shall be adjusted (upward or downward) (i) by the annual change in the consumer price index, and (ii) to exclude (A) one single item Merchandise Order of \$125 or more per quarter and (B) any single item Merchandise Order of \$500 or more (such amounts likewise to be adjusted upward or downward with the CPI), and the resulting amount shall be the new dollar threshold or measuring amount for that year.

- c. CPI Escalator Freeze. Notwithstanding the provisions of paragraph 46.i. of the 2001 Consent Judgment, the paid Order Dollar Threshold or measuring amount for automatic suppression shall (i) be \$5500 for order activity in calendar year 2010, and (ii) together with the special \$3800.00/year figure in paragraph 3 of this Article VI, shall not be increased to take into account increases in the Consumer Price Index for three years, commencing with calendar year 2011. Also the dollar amounts for (A) Annual Identification of 500 Customers Most Likely to be Unpromotable and (B) spending of \$1000 triggering the Annual No Purchase Necessary Letter shall not be increased to take into account increases in the Consumer Price Index for three years, commencing with calendar year 2011.

- 7. High Activity Customer Survey. Communications shall be considered “appropriate” for a person if the Special Compliance Counsel determines by the survey contemplated by Section 46.a. of the 2001 Consent Judgment that the person is (a) not generally confused or disoriented, (b) does not believe that buying shall help him/her win, and (c) is not making excessive purchases in

relation to his or her means.

- a. PCH and the EC, or so many of the Participating States on the EC as wish to participate in the endeavor, shall work in good faith on modifications to the existing High Activity survey to better assure that communications to High Activity Customers are appropriate in light of each customer's individual circumstances measured against the above 3 prongs.
- b. All survey modifications shall be undertaken in an effort to achieve the neutral and unbiased gathering of pertinent information, giving due regard to the need to identify and protect vulnerable individuals.
- c. Recommendations for modifications shall be submitted to a firm of experts of recognized standing in the field with special experience with applied research and senior populations selected by PCH (which may be the firm of experts that designed the original survey) for consideration and rejection and/or implementation. PCH and the Participating States on the EC will provide their respective ideas and goals for the process in a single joint letter to the firm of experts.
- d. In the event that the EC determines that the decisions of the firm of experts selected by PCH are unsatisfactory for any reason, the EC may select a second firm of experts of recognized standing in the field with special experience with applied research and senior populations to consider the matter. The States shall bear their own expense.
- e. The cost of the firm of experts selected by the EC shall be borne by PCH, but shall not exceed fifteen thousand dollars (\$15,000) plus travel and out-of-pocket expense. If the two firms are unable to agree, PCH and the EC may jointly select a third firm of experts to consider the matter. The cost

of any third firm of experts shall be borne jointly by PCH and such of the EC Participating States as choose to participate in this endeavor.

- f. The work of the panel shall be completed within eighty (80) days of the matter's being assigned to the panel and then PCH and each Participating State in this Supplemental Judgment must then decide to accept the survey or take the matter to court. If the panel cannot reach agreement the matter may be taken to court by PCH or any Participating State in each State or the current survey left in place.
- g. PCH and such EC Participating States shall exercise their best efforts to complete the survey review and revision project within six (6) months after the date of entry of this Supplemental Consent Judgment.
- h. Should the parties decide to modify the survey in the future they may do so by stipulation.
- i. PCH shall review the survey from time to time, in light of new information obtained in the conduct of the HAC program, and make such modifications and changes therein as shall appear to be necessary and proper to better assure the proper assessment of those being surveyed; provided that PCH shall not make any changes in the survey unless the same shall have been approved by Special Compliance Counsel and the Ombudsperson; and provided no material change arrived at in the survey modification process described in paragraphs a through g of this Section 7 will be changed by PCH for a period of three (3) years without the consent of the expert or experts engaged under paragraphs c and/or d of this Section 7, in addition to the consent of Special Compliance Counsel and the Ombudsman.
- j. PCH shall promptly provide copies on request of all completed surveys to

the Attorney General's consumer protection office in the customer's state for all surveys resulting in a determination of "promotable." This provision shall not limit in any way the Attorney General's right to challenge such a determination. All surveys provided to the Attorney General by PCH hereunder shall be deemed to be supplied as confidential information subject to such protections as may be accorded to such information under the laws, including FOIA laws and other applicable open records statutes of the State. Nothing in this section shall prohibit a State from using information contained in or obtained as a result of any survey provided hereunder, with due regard for any sensitive content, for the purpose of assisting individual consumers or for enforcement purposes by the Attorney General. If an outside party other than someone the State is sharing information with seeks access to a survey or surveys, the State will notify PCH.

8. Survey Procedures

- a. Survey Costs and Expenses. All costs and expenses of conducting HAC surveys to be borne exclusively by PCH.
- b. No Incentives. Survey-takers shall have no incentive, whether in the form of compensation formulas or otherwise, to skew the results of any survey, or to avoid explaining the results of any survey.
- c. Avoiding Undue Intrusiveness. A person who is surveyed and determined to be promotable need not be surveyed again for the next three (3) quarters following the quarter in which such determination is made, but shall be eligible for identification and survey in the ordinary course thereafter.

9. Avoiding the Resumption of Mailings. In order to better avoid a resumption of mailings to a High Activity Customer-suppressed individual due to minor

variations in a person's name and address, PCH shall quarterly apply to its customer and suppression files, for persons appearing thereon with an address in the State:

- a. The best name and address duplication identification and elimination technology and procedures available on commercially reasonable terms;
 - b. Weekly updates of the National Change of Address file provided by the United States Postal Service or other authorized service provider; and
 - c. Industry-standard address correction software certified by the United States Postal Service or other authorized service provider.
10. Avoiding Inappropriate Reinstatement. No person who is surveyed and determined to be inappropriate for sweepstakes promotion pursuant to the HAC program described in the foregoing sections of this Article VI shall be reinstated to promotable status without the written consent of the Attorney General.
11. Annual No Purchase Necessary Letter.
- a. PCH shall mail to all persons appearing on its customer file with an address within the State and having paid Orders of one thousand dollars (\$1000) or more in any calendar year a non-promotional stand-alone letter reminding them of the "Buying Won't Help You Win" and "No Purchase Necessary" messages, and including this message, conspicuously presented and in contrasting bold:

***"In fact, the majority of Publishers
Clearing House winners did not submit an
order with their winning entry."***

Such mailing shall occur not more than 180 days after the end of each calendar year.
 - b. Annual Letter Screening and Suppression. The Annual No Purchase Necessary Letter shall include a specially created dedicated 800# number

as a toll-free customer assistance hotline. Consumer calls to the customer assistance hotline, whether from customers themselves or from their friends and relatives, shall be screened by PCH's representatives for warning signs, such as general confusion or a belief that a purchase is necessary, that would suggest a survey is in order. PCH shall promptly attempt to contact and survey any customer as to whom such warning signs are detected and shall permanently suppress such individual if appropriate in light of the survey criteria then applicable.

VII. MONETARY PROVISIONS

Upon execution of this Supplemental Judgment, PCH shall pay a total of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) to the Participating States, to be divided among them as they shall in their discretion determine. Said payment shall be used by the Participating States for attorney's fees and other costs of investigation and litigation, or be placed in, or applied to, the consumer protection enforcement fund, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorney General for each Participating State.

The State of West Virginia's share of the settlement funds shall be placed in trust and used at the discretion of the Attorney General solely for consumer protection purposes, including but not limited to, restitution, consumer education, creditor or bankruptcy counseling and education, conflict resolution programs, and costs associated with implementing restitution orders.

VIII. EFFECTIVE DATES

1. High Activity Program. The provisions of Article VI shall be applied on the basis of paid Order activity in the first full calendar quarter after the date of entry of this Supplemental Judgment.

2. Additional Consumer Protections. The provisions of Article III shall become effective one hundred twenty (120) days after date of entry of this Supplemental Judgment.

3. Special Compliance Counsel and Ombudsman. The provisions of Articles IV and V shall become effective immediately upon entry of this Supplemental Judgment.

IX. GENERAL AND ADMINISTRATIVE PROVISIONS

1. No Modification of Obligations under Consent Judgment. Nothing herein is intended to or shall reduce, modify or mitigate in any way the compliance obligations of PCH under the Consent Judgment.

2. No Limitation of Consumer Rights and Remedies. Nothing herein is intended to or shall limit the rights of or remedies available to any consumer under the laws of the State.

3. Preservation of Law Enforcement Action. Nothing herein precludes the Attorney General from enforcing the provisions of the Consent Judgment and this Supplemental Consent Judgment or pursuing any law enforcement action with respect to the acts or practices of PCH not covered by the Consent Judgment and this Supplemental Consent Judgment or any acts or practices of PCH conducted after the date of entry of this Supplemental Judgment (or, in the case of the Additional Consumer Protections in Article III hereof; after the Effective Date).

4. Compliance with Law; Applicable Law. Nothing herein relieves PCH of its duty to comply with applicable laws of the State nor constitutes authorization by the Attorney General for PCH to engage in acts and practices prohibited by such laws. This Supplemental Judgment shall be governed by the laws of the State.

5. Non-Approval of Conduct. Nothing herein constitutes approval by the Attorney General of PCH's past or future Sweepstakes or other practices, and PCH shall not make any Representation contrary to the foregoing.

6. No Inducement. PCH acknowledges and confirms that no promise of any kind or nature whatsoever, other than the written terms hereof, was made to it to induce it to enter into this Supplemental Judgment, that it has entered into this Supplemental Judgment voluntarily, and that the Consent Judgment and this Supplemental Judgment constitute the entire agreement between PCH and the State with respect to the subject matter hereof.

7. No Use of Settlement as Defense. PCH acknowledges that it is the Attorney General's customary position that an agreement restraining certain conduct on the part of a defendant does not prevent the Attorney General from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the enforcement options of the State or the Attorney General in that manner. Therefore, nothing herein shall be interpreted to prevent the State or the Attorney General from taking enforcement action to address conduct occurring after the date of entry of this Supplemental Judgment that the Attorney General believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of the Consent Judgment or this Supplemental Judgment shall not be a defense to any such enforcement action.

8. Additional States. PCH's commitments in Section 1, Article VI, are based on the understanding that the Participating States would consist only of the states and the District of Columbia identified in Schedule A as "Participating States." PCH has stated, and the Participating States do not contest, that it cannot effectively administer or support an increase in surveys beyond these commitments and in particular is not in a position to expand this program to States other than the Participating States.

9. Release of Claims. The State acknowledges by its execution hereof that this Supplemental Judgment constitutes a complete settlement and release of all civil claims on behalf of the State against PCH, and all of its subsidiaries and affiliates, past

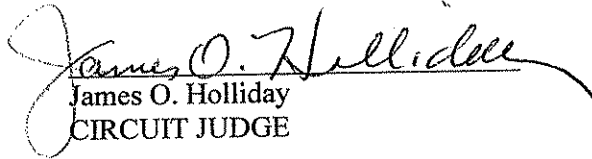
and present, and their past and present members, officers, directors, employees, agents and servants, and the representatives of any of them, and the successors and assigns of each thereof (all such released parties shall be collectively referred to as the "Releasees"), with respect to all civil claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under its consumer protection statutes and relating to or based upon the acts or practices which are the subject of the Consent Judgment and this Supplemental Judgment prior to the date of entry of this Supplemental Judgment (or, in the case of those relating to Sweepstakes Communications, prior to the Effective Date). The State agrees that it shall not proceed with or institute any civil action or proceeding based upon the above-cited consumer protection statutes against the Releasees, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorney's fees, or costs, for any Sweepstakes Communication disseminated prior to the Effective Date or for any other conduct or practice prior to the date of entry of this Supplemental Judgment which relates to the subject matter of the Consent Judgment or this Supplemental Judgment. Notwithstanding the foregoing, the State or the Attorney General may institute an action or proceeding to enforce the terms and provisions of the Consent Judgment or this Supplemental Judgment or to take action based on future conduct by the Releasees.

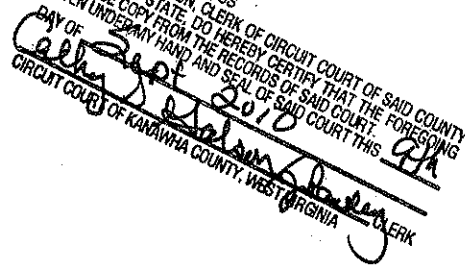
10. Modification. PCH and the Attorney General may modify the requirements and obligations imposed by the Consent Judgment and this Supplemental Judgment at any time by written agreement. If PCH comes to believe in good faith at any time hereafter that any of the terms hereof are no longer necessary for the protection of consumers, on that they conflict with any federal, state or local laws, rules or regulations, or that they are unreasonably burdensome, it may request such a modification. The Attorney General shall consider any such request in good faith, and grant it on good

cause shown, but shall not under any circumstances be obligated to grant any such request that it deems in good faith to be contrary to the public interest.

The Clerk is hereby directed to forward a certified copy of this Supplemental Consent Decree to counsel for the plaintiff and defendant.

Entered this 9 day of September, 2010.


James O. Holliday
CIRCUIT JUDGE

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 9th
DAY OF Sept 2010

CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

PRESENTED AND AGREED TO BY:



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Schedule A (Participating States)

- 1
- 2 Alaska
- Arizona
- 3 Colorado
- District of Columbia
- 4 Delaware
- Florida
- 5 Georgia
- Hawaii
- 6 Idaho
- Illinois
- 7 Maryland
- Michigan
- 8 Minnesota
- Mississippi
- 9 Missouri
- Nebraska
- 10 Nevada
- New Mexico
- 11 North Carolina
- North Dakota
- 12 Oklahoma
- Oregon
- 13 Pennsylvania
- Rhode Island
- 14 South Carolina
- South Dakota
- 15 Tennessee
- Texas
- 16 Vermont
- Virginia
- 17 Washington
- West Virginia
- 18 Wisconsin

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